IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 34243 of 2006(B)

PETITIONER:

DAVID JOHN, AGED 52 YEARS,
S/O.JHONE, HOUSE NO.32/564-E
BETHEL ENCLAVE, PALLISSERY ROAD,
PALARIVATTOM P.O., ERNAKULAM, ERNAKULAM DISTRICT.

BY ADV. SRI.NOUSHAD THOTTATHIL
SMT.NOORJI NOUSHAD

RESPONDENTS:

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1. KOCHI CORPORATION, REPRESENTED BY
THE SECRETARY, OFFICE OF THE KOCHI CORPORATION,
ERNAKULAM.

2. T.M.OUSEPH, HOUSE NO.32/564-A,
THAIYEDIAL HOUSE, BETHEL ENCLAVE,
PALLISSERY ROAD, PALARIVATTOM P.O.,
ERNAKULAM, ERNAKULAM DISTRICT.

3. STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY, DEPARTMENT OF LOCAL
SELF GOVERNMENT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.ANAND, SC, COCHIN CORPN.
R2 BY ADV.SRI.J.OM PRAKASH
R3 BY GOVT.PLEADER SMT.T.B.RAMANI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.34243 OF 2006

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DATED THIS THE 20TH FEBRUARY, 2007

J U D G M E N T

The petitioner challenges Ext.P6 order passed by the Tribunal for Local Self Government Institutions in Appeal No.319 of 2006 which had been filed by the 2nd respondent against the order of the 1st respondent-Corporation of Cochin regularising a temporary car shed constructed by the petitioner in front of his residential building for parking his Maruti car. The petitioner points out that his house plot was one of the five house plots in a larger property having an extent of 66 cents purchased by him, the 2nd respondent and four others jointly with the objective of constructing residential houses. There is a common outer wall for this small housing colony which now has five houses. Ext.P1 is the sketch which will show the lie and location of the housing colony which includes the petitioner's plot and house. The petitioner submits that he extended the sunshade constructed over the front window of his house as a small shed by using iron pipes and tress and paved small tiles over the same to match the other sunshades for the purpose of parking his car. Ext.P2 is the photograph of the shed so constructed. The 2nd respondent filed complaint before the 1st respondent alleging that the shed constructed is in violation of the

provisions of the Kerala Municipality Building Rules and is unauthorised. The 1st respondent issued an order under Section 406 (3) of the Kerala Municipality Act directing demolition of the shed. The petitioner approached the Tribunal for Local Self Government Institutions which allowed the petitioner's appeal and passed Ext.P3 order directing fresh consideration and to explore the possibility of regularisation. Pursuant to Ext.P3 order, the issue was reconsidered by the 1st respondent-Corporation which passed Ext.P4 order. Under Ext.P4 the Secretary of the 1st respondent regularised the construction of shed by obtaining an undertaking from the petitioner to the effect that he will remove the car shed if and when the same is required for any departmental work in the area. The petitioner complied with the directions in Ext.P4 and the 1st respondent even levied and collected the required fee for regularising the said construction as per Ext.P5 chalan receipt. But the 2nd respondent preferred appeal against Ext.P4 before the Tribunal for Local Self Government Institutions. The Tribunal allowed the said appeal and passed Ext.P6 order. Under Ext.P6, the Tribunal found that the structure offends the statutory requirements stipulated in sub-rules (3) and (11) of Rule 24 and Rule 25, and being so regularisation is not permissible and directed

demolition of the shed in compliance with Section 406(3) within two months. Impugning Ext.P6 on various grounds, the petitioner prays for a declaration that the structure does not offend any statutory provisions and for a writ of certiorari quashing Ext.P6.

2. A detailed counter affidavit has been filed by the 2nd respondent denying the claims and contentions of the petitioner. Ext.R2(a) produced along with the counter affidavit is copy of the complaint which he had filed and Ext.R2(b) is copy of the sale deed in respect of the land upon which the housing colony has now been established. Ext.R2(b) has been produced to show that the road inside the colony is meant for the common use of the vendors and vendees under the sale deed and also for the people in the locality.

3. Smt.Noorji Noushad, Advocate addressed me on behalf of the petitioner. She made very elaborate submissions on the various grounds raised in the Writ Petition, inviting my attention to the relevant rules in the Kerala Municipality Building Rules, particularly Rule 24(2) and also to various exhibits, particularly Exts.P3 and P6.

4. Mr.J.Omprakash, counsel for the party-respondent resisted the submissions of Smt.Noorji Noushad mostly. Counsel would draw my attention to the definition of the term "street" under the

Municipality Act and submit that even the inner road inside the colony will be a public street for the purposes of the Rules. Mr.Omprakash would submit that there is no warrant for interfering with Ext.P6 order which has been passed by a judicial Tribunal by considering the factual as well as legal aspects of the issue. He would submit that this Court is expected to enforce the law and not to permit anybody to violate the law. He would place reliance on various judicial precedents, particularly the judgments of the Supreme Court in **State of U.P. v. Harish Chandra** (AIR 1996 SC 2173), **State of Punjab v. Renuka Singla** (AIR 1994 SC 595), **Union of India v. Kirloskar Pneumatic Co. Ltd.** (AIR 1996 SC 3285) and **K.S.R.T.C. v. Ashrafulla Khan** (AIR 2002 SC 629).

5. Even though Smt.Noorji Noushad, learned counsel for the petitioner was very persuasive in her submissions and I feel that she is right in submitting that the 2nd respondent should not have made this serious an issue about the construction of a temporary car shed in the petitioner's house plot within his internal compound wall in a housing colony, considering the narrow contours of this Court's jurisdiction for judicially reviewing orders passed by judicial tribunals, I find my self unable to grant relief to the petitioner.

The Writ Petition is disposed of upholding the order of the Tribunal, but directing the petitioner to file an application for regularisation under Section 407 of the Act and under the Kerala Buildings (Regularisation of Unauthorised Construction and Land Development) Rules, 1999. The Secretary of the Corporation upon receiving the application will forward the same to the Government with due recommendations and the Government will, within three months of receiving the application, pass appropriate orders in the light of the observations contained hereinabove. Till such time as the Government takes a decision and communicates the order, the order of demolition presently passed by the Tribunal will be kept in abeyance.

(PIUS C. KURIAKOSE, JUDGE)

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